Nevertheless, having regard to the provisions of section 167 of the Evidence Ordinance and section 71(2) of the Courts of Judicature Act, we held that the improper admission of the confession did not warrant an order for a new trial or reversal of the decision of the trial judge as we were satisfied that, independently of the evidence objected to, there was abundant evidence to justify the conviction.

The appeals were accordingly dismissed. As to sentence the first appellant had been on bail since March 30, 1966, while the other two had been in custody from the date of their arrest. In order that the sentence should not be unevenly apportioned, we have reduced the sentence of the first appellant to 6 years with effect from date of dismissal of this appeal while affirming the sentence for the others.

Appeals dismissed.

Solicitors: *Cheang Lee & Ong; S. Seenivasagam & Sons.*

CHAN TENG CHEONG v. PUBLIC PROSECUTOR

[F.C. (Barakbah L.P., Azmi C.J. (Malaya) and Ong Hock Thye F.J.) January 6, 1967]

[K.L. — Federal Court Criminal Appeal No. X.35 of 1966]

Criminal Law and Procedure — Trial — Confession — Retracted confession — Direction of trial judge — Kidnapping Act, 1961, s. 3.

The appellant had been convicted of kidnapping a boy and he was sentenced to life imprisonment. The main grounds of appeal were (1) that the confession of the appellant recorded by a magistrate should not have been admitted, and (2) that the learned trial judge had failed to consider that the confession was retracted.

Held: (1) on the facts the confession was rightly admitted in evidence;

(2) the learned trial judge had sufficiently warned the assessors that they may reject the confession if they considered it was not true and this was a sufficient direction even though he did not warn the assessors that the confessoin had been retracted.

Cases referred to:—

(1) *Yap Sow Keong & Anor.* v. *Public Prosecutor* [1947] M.L.J. 90.

(2) *Sinaraju* v. *Public Prosecutor* [1961] M.L.J. 33.

FEDERAL COURT.

D. R. Seenivasagam for the appellant.

Ajaib Singh (Deputy Public Prosecutor) for the respondent.

Azmi C.J. (Malaya): The appellant was charged as follows:

"That you on the 29th day of November, 1965, at about 7.40 a.m. in front of Cator Avenue Primary School, Ashby Road, Ipoh, in the State of Perak, with intent to hold one Tay Yew Mun, aged 10 years for ransom, did abduct the said Tang Yew Mun, and you thereby committed an offence punishable under section 3(1) of the Kidnapping Act No. 41 of 1961."

and convicted by the court and sentenced to life imprisonment.

The facts of the case may be summarised as follows. On 29th November 1965, Tang Yew Mun aged 10 whilst on his way to school was abducted and confined in a vacant house in Ipoh. He was left alone in the house after the three kidnappers had tied up his hands and feet with pieces of wire and he was also blindfolded.

He, however, subsequently managed to escape and was taken to the hospital. Medical evidence showed that the injuries on the boy's arm and ankles were consistent with those parts of his body being tied with pieces of wire.

The boy's father Dr. Tang Sek San was informed of this incident and he immediately went to the hospital.

On 1st December 1965, Dr. Tang received a letter (exhibit P.9), purported to be signed by one Soong Kong dated 30th November 1965. The letter said that the gang originally intended to hide his son and then to demand a ransom of $100,000 but admitted that the attempt had failed.

On 19th January 1965 an unknown person telephoned Dr. Tang's house and spoke in Cantonese. His wife P.W.4, answered the telephone. She insisted on knowing the reason why he wanted to speak to her husband and when he refused to give his name although she asked him several times, she suspected that this person must be connected with the kidnapping of her son. Then when she spoke again on the telephone the voice said that he took part in the kidnapping of the boy. While she was still speaking, the doctor went to the house across the road and rang up the police. The doctor came back and took over the telephone from his wife. The voice admitted he was a member of the kidnap gang but said that it was through his help in failing to carry out the original plan of the gang in not securely tying the boy's hands or in putting sticking plaster on the boy's eyes or in giving him sleeping tablets, that the boy managed to escape. He then demanded $5,000 as a reward and he also promised that he would keep the doctor informed of future action of the gang. The voice also asked the doctor to place the money at a certain agreed place.

At the request of the police, the doctor placed a packet purporting to be the reward money at the agreed place but apparently nobody came to get it.

Subsequently the same day the same person telephoned the doctor again and without disconnecting the call the wife went to the house

across the road and contacted the police. Later the doctor himself spoke on the telephone and according to a pre-arranged plan with the police he kept the conversation as long as he could. In the course of that conversation the voice gave details of how the boy was kidnapped and taken to the vacant house.

It was during the second call that the police by arrangement with the telecommunications department traced the telephone from which the call was made and arrested the appellant. Subsequently a voice identification test was held and both Dr. Tang and his wife identified the voice of the appellant as the same voice that previously had spoken to them.

Within a few hours of his arrest appellant was taken to the magistrate's court originally for the purpose of getting an order remanding him in custody. According to A.S.P. Ismail, on the way to the court, the appellant informed him that he wished to give a statement to the magistrate.

However, the accused was brought before Che Abu Mansor, the magistrate, first at about 1.00 p.m. At his request the accused was brought again at about 3 p.m.

The appellant made a statement to the magistrate. The defence objected before the court to the admission of this statement and the learned judge held an inquiry in the absence of the assessors. At that inquiry the appellant gave evidence.

From the evidence of the magistrate and from his memorandum of inquiry which the learned magistrate took before taking the statement, it was obvious to us that the learned magistrate made very searching inquiry to satisfy himself that the statement which the appellant was going to give to him was voluntary. Among other things he asked the appellant when he decided to make a statement to the magistrate and the accused said:

> "This morning when I was brought to the court and when I was brought back to the C.I.D. headquarters it was then I decided to make a statement to the magistrate."

In answer to another question the appellant said that it was to A.S.P. Ismail that he said he wanted to make a statement. The learned magistrate then asked him how he knew he could make a statement to a magistrate. To that question he said that A.S.P. Ismail told him that if he wished to see a magistrate he could do so and he would be taken there. The magistrate asked him what he meant by the words "If he wished to see a magistrate". To that he said: "By this I understood him to mean that I could tell all to the magistrate and ask the magistrate for a pardon." But when asked again he said that A.S.P. Ismail did not tell him that he would be pardoned if he told all to the magistrate. In answer to further questions, the appellant said no inducement whatsoever was given to him by any police officer or A.S.P. Ismail, or any person in authority to make a statement to the magistrate and that while he was in police custody he was never assaulted but only asked a few questions. Nor was he threatened into making a statement to the magistrate. Then when he was asked why he wanted to make a statement he said as follows:—

> "I wished to make this confession because I have done a wrong and at the same time I wished to tell the magistrate that I was wrongly led to do this."

Finally the learned magistrate said he was satisfied that the statement that the appellant was going to give was a voluntary one.

The appellant also gave evidence at the inquiry before the court. Among other things he denied that he ever stated he wanted to see a magistrate before A.S.P. Ismail left the room where he was being interrogated. Nor did he tell P.W.11 that he wanted to see the magistrate on the way to the court the first time.

It was in fact after he was taken back to the office of the C. I. D. that the question of making a statement by him to the magistrate arose, and it was A.S.P. Ismail who suggested to him to do that and also that in doing so the appellant might be freed or leniently dealt with. That, according to the appellant was the reason why he wished to make the statement to the magistrate. The appellant also said that at the inquiry before the magistrate he was asked by the magistrate what he understood by the words "If you wish to see a magistrate." To that the appellant said "By this I meant I could be pardoned if I told all to the magistrate." The appellant also explained why he denied that A.S.P. Ismail told him he could be pardoned if he told to the magistrate. His explanation before the court was as follows:—

> ". . . because A.S.P. Ismail told me that if I were to tell the truth the magistrate would not record my statement because that would be under inducement."

In other words, the appellant told the court that he made a statement because he expected a pardon and on the advice of A.S.P. Ismail.

As we have said before, according to A.S.P. Ismail on the way to the court, the appellant told him that he wished to make a statement to a magistrate. In cross-examination A.S.P. Ismail maintained the same story. However, according to Senior Inspector Poh Thuan Keat, A.S.P. Ismail left the police room at about 12.45 p.m. but before that he told him that he was going to see a magistrate because the appellant wanted to make a statement. Senior Inspector Poh Thuan Keat also said that the appellant had indicated this desire in the room.

After hearing the addresses of the defence counsel and the learned deputy public prosecutor, the learned judge made a finding of fact as follows:—

"I find on review of the evidence that no inducement was offered to the accused and that the accused was not induced by any hope or pardon or leniency in making the statement.

I rule that the statement is admissible in evidence."

After recording further evidence, the learned judge summed up to the assessors and both assessors were asked by the court:—

Q: Are you satisfied that accused was one of the three kidnappers?

A: I am of the opinion that the accused was an accomplice.

Thereupon the judge stated, according to his notes of evidence:—

"I disagree with the opinion of the assessors.

On the evidence of P.W.3 and P.W.4 I hold that the accused was a member of the kidnap gang and that the confession made by the accused did not establish the actual part played by the accused in the kidnap but was made for the sole purpose of exculpating himself. The kidnap was made possible only by someone who knew the movements and the persons of P.W.1 and his family and the accused qualifies in this respect. I therefore find the accused guilty as charged."

and after recording evidence as to sentence, the learned judge convicted the appellant and sentenced him to imprisonment for life.

The first ground of appeal was against the admission of the confession. On this ground Mr. Seenivasagam read to us the evidence of the magistrate, A.S.P. Ismail, the court interpreter, and senior inspector Poh Thuan Keat, to which I have referred. He brought to our notice the discrepancy between the evidence of the two police officers as to the time when the accused first indicated his wish to make a statement. Mr. Seenivasagam said that having heard this discrepancy, the trial court should have put itself on guard and it should have accepted the appellant's story at the inquiry before it, that A.S.P. Ismail said that if the appellant told the magistrate everything, he would be freed or leniently dealt with. In other words the court should have held that the appellant made the confession because he was induced to do so with expectation of pardon or leniency.

In our view this is a question of fact and of credibility. The learned judge had seen these two witnesses who gave their evidence, and he had in his finding on this point, found there was no such inducement. We see no reason why this court should interfere with that finding of fact made by the learned judge. We would therefore, dismiss this ground of appeal.

Mr. Seenivasagam also said that the judge had failed to consider that this confession had been retracted. On this point this is what the judge said in his summing-up:—

"But it is entirely for you as judges of fact to place what weight you choose on the confession. In other words you can accept the confession as being voluntarily made and therefore a true confession. You may then accept what was told in the confession as true or you may even at this stage reject the confession and say 'I will not place any reliance on the confession.' As I have said gentlemen, what weight you place on the confession is entirely a matter for you."

We agree that there is nowhere in that passage where the judge warned the assessors that the confession had been retracted, but in our view the judge had sufficiently warned the assessors that they may reject the confession if they considered that it was not true.

Mr. Seenivasagam cited to us *Yap Sow Keong & Anor.* v. *Public Prosecutor* [1] and at page 91, Willan C.J. said:—

"We wish it to be known that when a person has been in police custody and the only evidence tendered against him at his trial is a confession which is retracted, it is the duty of the court to enquire into the matter with great care and satisfy himself that the confession has not been made by any inducement, threat or promise made by the police. Since this precaution was taken by the learned trial judge in this case, the appeal of the first appellant is dismissed."

In his argument, Mr. Seenivasagam also reminded us that the direction given by the learned judge to the assessors must in this case be regarded also as a direction to himself. It would be remembered that in this case the learned judge disagreed with the assessors on the verdict. The learned judge himself had after an inquiry satisfied himself that the confession was voluntarily made and must also have held that it was true.

As to the question of the truth of the confession, it must be remembered that the evidence of the boy and his parents substantially corroborated the facts disclosed in the confession.

On the question of direction of a judge in reference to retracted confession, the following passage at page 34 in the case of *Sinaraju* v. *Public Prosecutor* [2] might be relevant.

"It is true that Azmi J. did not enunciate a series of propositions of law, that he did not in terms say to the jury: these are retracted confessions; you must regard them with care; in the case of every confession as a matter of prudence you should look for corrobora tion;

. . . . . .

It is true he did not say these things in terms but when we read the summing-up as a whole we are satisfied that the effect of these propositions was sufficiently conveyed to the jury. Again and again he said that unless they were satisfied in the first place that they were voluntary and in the second place they were true, they should not believe the confessions."

In the present case as we said before, the judge himself held that the confession was voluntarily made after an inquiry and that he did direct the assessors that they must be satisfied

that before they accept the confession it was also true.

For the above reasons we think this ground must also fail.

Mr. Seenivasagam also complained that there was no evidence to connect the annonymous letter to the appellant. It is true that according to Dr. Tang, P.W.3, the voice on the telephone denied that he sent the annonymous letter, and we are unable to find any reference to that letter in the confession itself.

In his summing-up the learned judge dealt at some length on this letter. He said that it could have been sent by a member of the gang or it could have been sent by somebody else and then went on to put this question to the assessors:—

"Why should anybody, who knew nothing about the kidnapping, or who had nothing to do with the kidnapping, write this letter so soon after the kidnapping? You might come to a finding, as for myself I would — but you must not be influenced by my opinion — that this letter was, in fact, sent by the kidnap gang."

And then the judge went on to refer to a sentence in the letter which says: " 'We intended to resort to extortion by demanding the sum of $100,000' as being associated with the kidnap. This was clearly a demand for money and you may find that this demand was the intent to ransom which forms the necessary ingredient of the offence." The learned judge went on to refer to the evidence of Dr. Tang where he said that the voice on the telephone said "Originally his gang wanted $50,000 for the ransom."

In our view the learned judge in directing the assessors on this must himself have found as a fact that though this letter was not written by the appellant, it was written by the gang. In this respect we think it is relevant to know that in the charge itself there was allegation that the appellant committed this offence with two others still at large.

In our view this ground should also fail.

In the third ground of appeal, on the question of intention and knowledge, Mr. Seenivasagam, as we understood him, said there was no evidence to show that the appellant's intention was to hold the boy for ransom or to connect the ransom note to the appellant and also the fact that the demand by the appellant was made after the kidnap.

The judge as we have just stated had dealt in great details with the question as to the identity of the writer of the ransom note and he, as it appeared to me held the view that the letter was connected with the kidnap. As we have said we do not see why we should interfere with that finding of fact. On the second point that the demand was made after the kidnap, once it is proved that the two things were connected, as parts of the same transaction, we do not think it is material which happened first, because in our view, there is no doubt that the abduction was made with intention of demanding a ransom. This ground must also fail.

We would therefore dismiss the appeal and confirm the conviction and sentence.

Appeal dismissed.

Solicitors: *S. Seenivasagam & Sons.*

AH MEE v. PUBLIC PROSECUTOR

[F.C. (Barakbah L.P., Azmi C.J. (Malaya) and Ong Hock Thye F.J.) January 6, 1967]

[K.L. — Federal Court Criminal Appeal No. X.40 of 1966]

Penal Code, s. 376 — Rape — Corroboration of evidence of complainant — Corroboration must be independent evidence implicating accused — Demeanour of complainant.

Evidence — Corroboration — Nature of corroboration required — Inadmissible evidence in material particulars — Evidence Ordinance, 1950, ss. 91, 92 & 157.

The appellant had been convicted of rape. The trial judge considered that the complainant's credibility was unimpeached and he stated that he was personally impressed by her demeanour. He thought her evidence consistent throughout and held that her evidence of rape was amply corroborated.

Held: (1) corroboration in the legal sense connotes some independent evidence of some material fact which implicates the accused person and tends to confirm that he is guilty of the offence and in this case there was no such corroboration of the evidence of the complainant;

(2) in view of the inconsistencies in the evidence of the complainant it was unsafe to rely on her uncorroborated evidence and therefore the conviction must be set aside.

Per curiam: Section 91 of the Evidence Ordinance applies equally to criminal trials, no less than to civil proceedings, and it categorically states that "in all cases in which any matter is required by law to be reduced to the form of a document, no evidence shall be given in proof of the terms . . . of such matter except the document itself." The report was information relating to the commission of an offence which "shall be reduced to writing" pursuant to section 107 of the Criminal Procedure Code (Cap. 6), and section 92 of the Evidence Ordinance goes on to exclude all parole evidence seeking to contradict or vary what was set out in writing.

Cases referred to:—

(1) *R.* v. *Clynes* (1960), 44 Cr. App. R. 158, 161.

(2) *Mohamed Ali* v. *Public Prosecutor* [1962] M.L.J. 230, 231.

(3) *R.* v. *Baskerville* [1916] 2 K.B. 658; 12 Cr. App. R. 81.

(4) *Brabakaran* v. *Public Prosecutor* [1966] 1 M.L.J. 64.

(5) *R.* v. *Redpath* (1962), 46 Cr. App. R. 319.

(6) *R.* v. *Knight* [1966] 1 All E.R. 647.

(7) *Chiu Nang Hong* v. *Public Prosecutor* [1965] 1 M.L.J. 40, 43.

(8) *Powell & wife* v. *Streatham Manor Nursing Home* [1935] A.C. 267.